

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

August 2, 2007

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, August 2, 2007, at 1:32 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Darrell Downing, Chair; Don Anderson, Vice-Chair; Elizabeth Bishop; David Dennis; Michael Gisick (in @1:33 p.m.); Bud Hentzen; Hoyt Hillman; Bill Johnson; Ronald Marnell; John W. McKay Jr.; M.S. Mitchell (out @ 1:35 p.m.); Don Sherman; and G. Nelson Van Fleet. Staff members present were: John L. Schlegel, Secretary; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Jess McNeely, Senior Planner; Derrick Slocum, Associate Planner; and Maryann Crockett, Recording Secretary.

❖ **Item # 1-1 may be taken in one motion unless there are questions or comments.**

1. Consideration of Subdivision Committee recommendations from the meeting of July 26, 2007.

1-1. SUB 2007-41: Final Portion of Overall Preliminary Plat -- SIERRA HILLS 2ND ADDITION, located on the north side of Pawnee and west of 143rd Street East.

NOTE: This site is located in the County adjoining Wichita's city limits and annexation is required. The site is currently zoned SF-20, Single-Family residential and will be converted to SF-5, Single-Family Residential upon annexation.

This final plat is the north portion of the overall preliminary plat approved for the site and represents the first phase of development. The street layout and lot configuration is consistent with the preliminary plat.

STAFF COMMENTS:

- A. Prior to this plat being scheduled for City Council review, annexation of the property will need to be completed. Upon annexation, the property will be zoned SF-5, Single-Family Residential and allow for the lot sizes being platted.
- B. The applicant shall guarantee the extension of City water and sanitary sewer (lateral and main) to serve the lots being platted.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. City Engineering has approved the drainage plan. An offsite drainage agreement is needed.
- E. The Applicant shall guarantee the paving of the proposed streets. The guarantee shall also provide for sidewalks on at least one side of all through, non cul-de-sac streets.
- F. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed.

- G. GIS has requested that Ironstone be replaced with Clear Creek.
- H. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- I. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- L. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- M. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. Westar Energy has requested additional easements.
- P. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to staff recommendation.

JOHNSON moved, **MITCHELL** seconded the motion, and it carried (11-0).

MCKAY abstained due to a conflict of interest.

GISICK in @1:33 p.m.

M. S. MITCHELL out @ 1:35 p.m.

- 2. Consistency of the Proposed 2007-2016 City of Wichita C.I.P. and the Proposed 2008-2012 Sedgwick County C.I.P with the Wichita-Sedgwick County Comprehensive Plan



CIP overview for
MAPC 8-2-07.p...



C-2008 to 2012 CIP
Show to MA...

Consistency of the Proposed 2007-2016 City of Wichita C.I.P. and the Proposed 2008-2012 Sedgwick County CIP With the Wichita-Sedgwick County Comprehensive Plan.

PETE GIROUX, SENIOR MANAGEMENT ANALYST, COUNTY FINANCE, briefly reviewed the make up of the County CIP Committee, which included **PLANNING DEPARTMENT DIRECTOR JOHN SCHLEGEL**. He commented that the purpose of the County CIP was to identify capital needs for various County functions and departments, prioritize all capital needs into a single coordinated plan, fit the prioritized projects into the resources available in the County budget, and to communicate the plan to citizens. He said departments and agencies submit prioritized requests every year, which included cost estimates and project justification. He said the CIP Committee reviewed written requests and heard presentations from submitters in order to obtain a clear understanding of capital needs. He said the CIP Committee then prioritizes all projects and the recommended CIP is presented to the County Manager and then to the Board of County Commissioners.

JIM WEBER, DEPUTY DIRECTOR, PUBLIC WORKS, reviewed the 2008-2012 Roads and Bridges CIP as follows:

Significant projects for 2008 included: Preventative maintenance – \$8 Million; 21st N. Widen to 4 lanes: K-96 to 159 E. (COW/KDOT) \$6.90 Million; Clifton Channel Improvements – \$1.50 Million; 143rd E. Bridge over the Kansas Turnpike (LST/KTA/KDOT) – \$3.45 Million.

Significant projects for 2009 included: Preventive maintenance - \$4.90 Million; 199th W: 21st N. to US 54 (LST/KDOT) - \$2.18 Million; Meridian: 47th St. S. to 71st St. S. (LST/KDOT/Bond) - \$7.00 Million; Ridge Road Widen to 4 lanes: K-96 to 53rd N. (LST/KDOT/Bond) - \$7.72 million; 63rd St. S. Widen to 4 lanes: Broadway to Hydraulic (LST/KDOT) - \$3.26 Million; Bridge-Hydraulic over WVCFC (LST/KDOT) - \$8.40 Million; and Bridge – 151st St. W over Ninnescah - \$1.00 Million.

Significant projects for 2010 included: Preventive maintenance (LST) - \$5.10 Million; 135th St. W: K-42 to Diagonal (Bond) – \$3.00 Million; 135th St. W.: 1/2 Mile N. of US 54 to K-42 (LST/KDOT) – \$3.16 Million; Maize Rd. Widen: 45th St. N. to 53rd St. N. (LST/KDOT) \$6.56 Million; Right of Way, Shoulders, Drainage, Rejuvenation (LST/KDOT) - \$5.60 Million; Widen 159th Ste E: US 54 to 21st St. N. (LST/Andover/KDOT) - \$3.66 Million; and 151st St. W: 53rd St. N. to K-96 (LST) - \$2.18 Million.

Significant projects for 2011 included: Preventive maintenance - \$6.70 Million; 183rd St W: 71st St. S. to 95th St. S. (Bond) - \$1.50 Million; 183rd St. W.: 23rd St. S. to 39th St. S. (Bond) - \$1.00 Million; Corridor Improvements 47th St. S.: Broadway – KDOT (LST/COW/KDOT) - \$15.00 Million; and Bridge Deck Rehab & Guard Fences (LST/Bond) - \$2.80 Million.

Significant projects for 2012 included: Preventive maintenance – (LST) - \$6.00 Million; West St. Widen to 4 lanes – COW to 47th St. S. (Bond) - \$4.00 Million and Bridge – 119th St. W. over Arkansas (LST/KDOT) - \$5.75 Million.

He said future projects included 135th St. W. widening – diagonal to Ross \$1.50 Million and 383rd St. W. reconditioning – US 54 to Cheney limit – \$0.85 million.

STEPHANIE KNEBEL, MANAGER, PROJECT SERVICES, reviewed the CIP Funding Plan for Facilities and Drainage projects starting with already approved projects as follows: Juvenile Court & remodel for DA - \$14.13 Million; Construct Sedgwick County Arena - \$201.02 Million; Construct Center for Aviation Training (at Jabara Airport) – \$40.00 Million; Construct Fire Stations 32, 33, 36 and 39 - \$8.66 Million; and Remodel and Expand Adult Detention (Phase 1) - \$27.00 Million.

Facilities and Drainage projects for 2008 included: Remodel & Expand Adult Detention (Phase 2) – \$18.53 Million; Improve Clifton Stormwater Channel - \$1.50 Million; Construct EMS Post 10 – Via Christi - \$0.76 Million;

Construct EMS Post 3- Wesley – \$0.88 Million; Roof replacements - \$0.29 Million; and Relocate Fire Station 35 - \$1.97 Million.

Facilities and Drainage projects for 2009 included: Courthouse Campus renovations - \$5.92 Million; Replace JRBR Boilers & Hot Water System - \$1.10 Million; Heartland Preparedness Center – Infrastructure Design - \$0.21 Million (She mentioned that this was a joint project with the City and Federal government.); and Expand Parking at Sedgwick County Park - \$0.29 Million.

Facilities and Drainage projects for 2010 included: Heartland Preparedness Center – Infrastructure - \$1.74 Million; Remodel Sheriff's Squad Room - \$1.16 Million; Replace Coop. Extension HVAC - \$0.44 Million; Replace Sedgwick County park restrooms - \$0.23 Million; and Repair Lake After Lower Spillway - \$0.30 Million.

Facilities and Drainage projects for 2011 included: Heartland Preparedness Center – Law Addition - \$6.17 Million; Design SC Sports Complex – (Central ball fields at Ridge and 21st Street) - \$.55 Million; Repair Lake Afton Lower Spillway - \$2.78 Million; Outdoor Warning System, which was a major upgrade of the tornado sirens - \$0.85 Million; Replace EMS Post #9 (East) - \$0.87 Million; Roof Replacements - \$0.59 Million; and Parking Lot replacements - \$0.55 Million.

Facilities and Drainage projects for 2012 included: Drainage Improvements SW of Haysville (ROW) - \$.60 Million; Channel Improvements along Bluff, 87 – 103rd – Arkansas River - \$1.60 Million; and Street Improvements on Main, Water & Elm - \$4.44 Million.

PETE GIROUX commented that Capital funding plans are guided by debt policy, which he briefly reviewed including policy preference for pay as you go, formal structure for periodic review of debt issuance plans, and guidelines for structure, issuance methods and debt administration. He reviewed tax assumptions, which included 4.2% growth for 2007, and 3.8% for 2008 –2012. He commended that a dedicated sales tax provided a predictable funding base. He said KDOT provides a nearly equal funding source with the balance of CIP funding being financed with debt.

BISHOP asked if **GIROUX** had observed any particular trends that the MAPC should be aware of, particularly with regard to maintenance costs, which could be critical for future planning of CIP projects.

GIROUX commented that there was a 32% increase in fuel costs last year. **WEBER** mentioned the effects of Hurricane Katrina, and said although fuel costs were stable at this high level, staff feels comfortable with its assumptions, as long as some dramatic event does not happen.

HENTZEN asked about the County's bond rating.

GIROUX said the County has the highest rating from Fitch and the next highest rating from other services.

Tape 1, Side 1

HENTZEN clarified that financing comes from sales taxes, property taxes and fees. He said since this was a five-year plan, was there any push to up the mill levy or did staff feel sources of funds are adequate for now.

GIROUX said staff feels funding is adequate, through the five-year plan.

HENTZEN asked why the County was building fire stations?

KNEBEL responded that the stations are not brand new, but that they are relocating stations from their current locations.

JAY NEWTON, CAPITAL IMPROVEMENT COORDINATOR, CITY OF WICHITA FINANCE DEPARTMENT, reviewed the City's Administrative CIP Committee, which included **PLANNING DEPARTMENT DIRECTOR JOHN SCHLEGEL**. He commented that the proposed CIP is a 10-year capital

budget for the City that begins to lay the foundations for the City Council's emerging strategic vision and while capitalizing on Wichita's strengths. He said the policy framework is:

- A constant 10-mill property tax levy
- Half of sales tax receipts for freeway projects
- Water & Sewer rate increase
- Golf greens fee increase
- Matching outside funding is the highest priority, and
- Minimal changes to previously approved projects

NEWTON also mentioned funding from the Wichita Area Metropolitan Planning Organization (WAMPO) and partnerships with Sedgwick County.

He said the proposed capital program highlights five goals adopted by the City council, which were Safe & Secure Community; Economic Vitality & Affordable Living; Efficient Infrastructure; Quality of Life; and Core Area & Neighborhoods. He briefly reviewed the highlights of each goal as follows:

- Safe & Secure Community
 - Police substations
 - Police bomb range
 - 3 fire stations
 - Heartland preparedness center (a joint project with the Federal government and Sedgwick County)
 - Regional fire training center, and
 - Animal shelter (in conjunction with the Kansas Humane Society)
- Economic Vitality & Affordable Living
 - Air terminal (\$150 Million), and
 - Special assessments projects (\$25 – \$30 Million)
- Efficient Infrastructure
 - Seventy-five roads and 14 bridges
 - Aquifer storage and recovery long-term water supply plan
 - Additional water production and wastewater treatment facilities
 - Twenty-three drainage projects, and
 - Kellogg Freeway
- Quality of Life
 - Central library
 - Century II improvements
 - Golf courses
 - Park and Recreation and Open Space (PROS) Plan

He also mentioned maintenance and construction of City facilities including City Hall 1st floor remodel; facilities space utilization and ergonomic improvements; arts and cultural facilities; and the central maintenance facility.

He reviewed pie charts with Revenues and Expenditures of \$2,386,838,000. Revenues consisted of enterprise fees of 15%; property tax local of 18%; sales tax of 7%; Federal/State taxes of 15%; special assessments of 13%; and other 16%. He said expenditures consisted of water/sewer 23%; storm water 3%; park/public facilities 22%; arterials/bridges 15%; econ/redev 8%; freeways 5%; transit 1%; new development 14%; and airport 13%.

NEWTON noted that after Advance Plans staff reviewed the CIP, one road project that was not in conformance with the Comprehensive Plan was removed. He said funding for that project will be reprogrammed into existing projects.

HENTZEN asked about the location of the Heartland Preparedness Center and clarified that the City and County were both contributing \$6.5 million?

NEWTON said the center would be located north of 21st Street and east of I-135. He said both the City and County were contributing \$6.5 million and, in addition, the project would be receiving \$84 million from the Federal government.

Responding to a question from **HENTZEN** concerning the new 911 center, **KNEBEL** stated that the new Public Safety Center was completed and that it would house Emergency Management staff, the Director of Public Safety and the 911 Dispatch Center.

DIRECTOR SCHLEGEL stated that the recommendation of Planning Staff was to find that the City and County CIP's were in conformance with the Comprehensive Plan.

MOTION: That both the City and County CIP Programs, as amended, are in conformance with the Comprehensive Plan.

HENTZEN moved, **HILLMAN** seconded the motion, and it carried (13-0).

❖ **PUBLIC HEARINGS**

ADVERTISED TO BE HEARD NO EARLIER THAN 1:30 P.M.

3. **Case No.: ZON2007-34** – Toan Doc Nguyen (owner) Request City zone change from "LC" Limited Commercial to "GC" General Commercial on property described as;

Lot 1, Block A, Schweiter's 11th Addition, Wichita, Sedgwick County, Kansas. Generally located On the northeast corner of Harry Street and George Washington Boulevard.

BACKGROUND: The applicant seeks "GC" General Commercial zoning on a .26-acre lot located northeast of the Harry and George Washington intersection. The "LC" zoned site was a former fire station, and is now developed with a vehicle repair business. Vehicle repair, limited is a permitted land use under the current LC zoning. The applicant now wishes to do auto bodywork (see the attached applicant's letter), which falls under the definition of vehicle repair, general, and requires GC zoning. The site received a Conditional Use in 1999 permitting outdoor vehicle sales limited to three vehicles. A variance approved by the Board of Zoning Appeals in 1999 reduced the parking requirement on the site from 12 to 9 spaces.

The Unified Zoning Code (UZO) definition for vehicle repair, limited is: *a use providing motor vehicle repair or maintenance services within completely enclosed buildings, but not including paint and body shops or other general vehicle repair services within completely enclosed buildings. Typical uses include businesses engaged in the following activities: electronic tune-ups; brake repairs; air conditioning repairs; transmission and engine repairs; generator and starter repairs; tire repairs; front-end alignments; battery recharging; lubrication; sales, repair, and installation of minor parts and accessories, such as tires, batteries, windshield wipers, hoses, windows, etc.* The UZO definition for vehicle repair, general is: *an establishment primarily engaged in painting or bodywork to motor vehicles or heavy equipment. Typical uses include paint and body shops.*

The application area has "GO" General Office, "B" Multifamily Residential, and "TF-3" Two-family Residential zoning to the north, with an apartment building and single-family residences immediately north of the site. South of the site, across Harry, is an LC zoned commercial area. Southwest of the site, across Harry and George Washington, is the "LI" Limited Industrial zoned Coca-Cola bottling facility. East of the site is an LC zoned commercial area. West of the site, across George Washington, is an LC zoned restaurant and commercial area.

CASE HISTORY: The site was platted as Lot 1, Block A Schweiters Addition in 1979. The tax assessor lists the building as constructed in 1962. The site received a Conditional Use for vehicle sales, CU 498, in 1999. And, the site received a variance, BZA 12-99, reducing the parking requirement on the site from 12 to 9 in 1999.

ADJACENT ZONING AND LAND USE:

NORTH:	GO, B, TF-3	Multi-family and single-family residential
SOUTH:	LC	Retail
EAST:	LC	Retail
WEST:	LI, LC	Bottling plant, restaurant, retail

PUBLIC SERVICES: Municipal sewer and water services are available. The site has access to both George Washington Drive, and Harry. George Washington Drive is a two-lane local street running alongside George Washington Blvd. Harry is a four-lane arterial at this location with a central and right turn lane.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide map designates this site for local commercial development. The Comprehensive Plan Objective II.B. states: *Minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments.*

RECOMMENDATION: The application area is a small site, with overhead doors facing multi and single-family residences immediately north of the site. The application area already has the LC zoning and Conditional Use in place for vehicle repair, limited, and vehicle sales. The proposed GC zoning on the site would permit auto bodywork and painting within a close proximity (50 feet between buildings) of existing residences. GC zoning would also permit land uses not permitted under the current LC zoning such as tattoo and body piercing facility, self-service warehouse, gas and fuel storage and sales, manufacturing limited and general, vehicle storage yard, warehousing, and welding or machine shop.

The manager of the apartment building north of the site contacted staff via e-mail, the manager is opposed to the zone change (see the attached e-mail). Based upon information available prior to the public hearings, planning staff recommends that the request be **DENIED**.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** Property north of the site is zoned GO and residential, and developed with multi and single-family residential uses. Areas to the east, south, and west of the site are zoned LC and developed with retail and restaurant uses. Southwest of the site is LI zoning with the Coca-cola bottling plant. The proposed zoning and land use are out of character with the abutting residential neighborhood north of the site.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned LC, which permits vehicle repair, limited. The site has a Conditional Use permitting vehicle sales. The site could be used under the current zoning for a variety of land uses, similar to the retail and restaurant uses east, west, and south of the site.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Rezoning to GC will permit vehicle repair, general (specifically auto bodywork and painting), and a number of land uses which would be detrimental to the residential properties and neighborhood immediately north of the site.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The 2030 Wichita Functional Land Use Guide map designates this site for local commercial development.
5. **Impact of the proposed development on community facilities:** The proposed zone change would not necessarily increase demand on adjacent streets, or public water and sewer resources.

JESS MCNEELY, Planning staff presented the staff report.

MCKAY clarified that the strip center to the east of the location was zoned Limited Commercial?

MCNEELY said that was correct.

PRESIDENT DOWNING requested that the record reflect that the applicant declined to speak to the MAPC.

MIKE IRWIN, 3009 E. WILMA, said he was the maintenance staff from the apartment complex right behind the auto repair shop and he was present to represent the apartment complex owner who was opposed to any zone change. He mentioned the noisy repairs that take place outside the garage and said that when they show potential tenants the apartments in the back of the complex, there is always noise and wrecked cars in the parking lot. He said the owner of the garage has done a good job clearing out the cars, but he always brings in more cars. He added that there is no fence between the apartment complex and garage because of a grandfather clause. He said they oppose this proposed change because it will hurt the property value of the apartment complex. He mentioned issues like the noise level and stripping down cars and junking them outside the garage in the parking lot. He said this is not supposed to be a junkyard. He also mentioned that the garage parks cars on the street for more than 24 hours. He said the apartment complex owner has sent a letter to the Planning Department stating that this proposal would hurt his income and future growth of his property.

GLADIE IRWIN, 3007 E. WILMA, said she is disturbed the most by the activities at the garage because of where she is living. She said her windows open up on the south side right where the garage is located. She said she has seen as many as 16 to 20 cars in that small parking lot at the garage and that some of the cars were totally demolished and stored in the parking lot. She mentioned that they use a Bobcat to move most of the cars and trucks. She said there seems to be hardly any repair work or any customers at the garage. She said both her living room and bedroom face the garage and the noise level associated with them taking apart trucks and the stripping cars is unbelievable. She said the people that work there bring in demolished cars seven days a week and they begin work early in the morning and continue late into the night. She said what she hears are not normal noises for a car repair shop and that she can't even sleep because of the noise. She said most garages work on cars inside, but this one does not, they work on cars in the parking lot.

TOAN NGUYEN, 3002 E. HARRY, APPLICANT, said he is the owner of the A&V Auto Shop. He said business hours are 8:00 a.m. – 6:00 p.m. Monday through Friday and 9:00 a.m. – 4:00 p.m. on Saturday. He added that they do most of their work inside the shop. He stated that the tenants of the apartment complex were using his parking lot, and that the vehicles parked along the street belonged to the apartment complex tenants. He concluded by stating that he pays State taxes monthly and that he does have customers.

BISHIOP asked if Mr. Nguyen has ever received citations from the Office of Central Inspection (OCI)?

NGUYEN said the City had contacted him once and requested the he move the vehicles and clean up the parking lot. He said sometimes he stores vehicles that belong to car lots.

BISHOP asked **MR. NGUYEN** to explain the statement about vehicles from car lots?

NGUYEN explained that he has both individuals and car lots as customers.

MOTION: To approve staff recommendation to deny the application.

HILLMAN moved, **BISHOP** seconded the motion, and it carried (12-0).

MCKAY said he did not think it was appropriate for a maintenance man to speak to the MAPC and say he was representing the owner without proper letters and documentation.

IRWIN said he had letters with him and gave them to the recording secretary.

4. **Case No.: CON2007-27** (deferred from 7-19-07) – St. James Episcopal Church / Twila Warren Request City Conditional Use to allow Day Care at St. James Episcopal Church (3750 E. Douglas) on property zoned “TF-3” Two-family Residential.

Lot 5 of the Conner Addition in Wichita, Sedgwick County, Kansas,
AND
North 1/2 of Lot 1 of the Cassitt and Magill's Addition in Wichita, Sedgwick County, Kansas,
AND
South 1/2 of Lot 1 and all of Lots 2, 3, 4, 5 and 6 of the Cossitt and Magill's Addition in Wichita, Sedgwick County, Kansas,
AND
West 66 Feet of the South 157 Feet of the East 131.54 Feet of Lot 2, Block 3 of the College Hill Addition in Wichita, Sedgwick County, Kansas,
AND
East 65.54 Feet of the South 157 Feet of Lot 2, Block 3 of the College Hill Addition in Wichita, Sedgwick County, Kansas,
AND
South 70 Feet of the North 140 Feet of the East 131.75 Feet of Lot 2, Block 3 of the College Hill Addition in Wichita, Sedgwick County, Kansas,
AND
North 70 Feet of the East 151.75 Feet of Lot 2, Block 3 of the College Hill Addition in Wichita, Sedgwick County, Kansas. Generally located at the northeast corner of Douglas and Yale Streets.

BACKGROUND: The applicant, St. James Episcopal Church, is requesting consideration and recommendation for a Conditional Use to allow a Day Care, General, for an after-school program with a possible maximum enrollment of 128 kids on church grounds, located on property zoned B Multi-family Residential and TF-3 Two-family residential. The property (0.86 acres) is located about 1,700 feet east of the intersection of Douglas and Hillside on the north side of Douglas. East Douglas Avenue fronts the south side of the property, North Yale Avenue fronts the west side, North Roosevelt Avenue fronts the east side and E. 1st Street fronts the north side. Residential and commercial zoning on all four sides surrounds the property. The Unified Zoning Code requires a Conditional Use when a Day Care, General, is located in TF-3 zoning.

The applicant proposes to provide day care for around thirteen children in the existing church during the week. This site does provide for an outside play area for the after-school program. The applicant has provided Staff with a Site Plan that conforms to the development standards of the City. The site contains approximately 20,000 square feet that houses the church's sanctuary, offices, classrooms and other associated church facilities. Access to the site is provided off North Yale Avenue and off of North Roosevelt Avenue.

CASE HISTORY: The property was platted as part of the College Hill Addition, Cossitt and Magill's Addition, and Conners Addition between 1914 and 1915. This church is within the 500-foot historic environs of the CM Jackman House, located at 158 Roosevelt. This application is for a daycare, general, within an existing structure, and there will not be any alterations to the exterior of the existing building and no significant change in the current use.

ADJACENT ZONING AND LAND USE:

NORTH:	“SF-5” Single Family Residential	Residential Housing
EAST:	“SF-5” Single Family Residential	Institutional
	“TF-3” Two Family Residential	Institutional
SOUTH:	“GO” General Office	Office Use
	“PUD” Planned Unit Development	Restaurant
WEST:	“LC” Limited Commercial	Retail

PUBLIC SERVICES: North Yale Avenue and North Roosevelt Avenue are paved two-lane local roads. East Douglas Avenue is a 4-lane minor arterial with 12,990 average trips per day at the intersection with Hillside Avenue, (just west of the subject site) according to the 2006 Traffic Count Map. Municipal water and sewer services are available at this site.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide of the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan identifies this property as “major institutional.” The major institutional land use category includes institutional facilities including government facilities, military bases, libraries, schools, cemeteries, churches, hospital and medical treatment facilities. The current zoning of the site is TF-3 Two-family Residential and B Multi-family Residential, a higher residential density. Day Care, General is a conditional use for the TF-3 zone, per the regulations detailed in the WSC Unified Zoning Code.

RECOMMENDATION: Based on the information available prior to the public hearing, MAPD staff recommends the application be APPROVED, subject to the following conditions:

1. The Day Care Center shall comply with all applicable regulations.
2. The site shall be developed and operated in conformance with the approved site plan. A day care, general, for a maximum of 128 children is permitted.
3. Outdoor play shall be limited to the hours of 7:30 AM to 6:30 PM if located within 100 feet of a lot containing a dwelling unit.
4. Shared parking may be provided for a provision for parking spaces as outlined in Section IV-A.4 when the day care is located within an existing church or place of worship, however, the day care shall provide convenient off-street loading facilities as required in Section IV-A.14.
5. All outdoor lighting shall employ cut-off luminaries to minimize light trespass and glare, and shall be mounted at a height not to exceed ½ the distance from the neighboring lot, unless evidence is provided to the satisfaction of the Planning Director that the light source will be aimed or shielded such that the light source is not visible from the neighboring lot.
6. Any violation of the conditions of approval shall declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. The area around the site is zoned residential and commercial, developed with residential, commercial and institutional uses. The church is a large structure and is home to a large congregation.
2. The suitability of the subject property for the uses to which it has been restricted. The site is zoned TF-3, Two-family residential, and is developed with a church. The property could continue to operate as currently zoned, however, the approval of a day care for a maximum of 128 children is not an unreasonable request for a property developed with a church with adequate parking.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed conditional use is for a daycare / after school program, in an existing church. This type of use is common in churches within the city and county. The affect of a possible 128-child day care on nearby property will be minimal give the church’s current size.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The 2030 Wichita Functional Land Use Guide of the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan identifies this property as “major institutional.” The major institutional land use category includes institutional facilities including government facilities, military bases, libraries, schools, cemeteries, churches, hospital and medical treatment facilities. The current zoning of the site is TF-3 Two-family Residential and B Multi-family Residential, a higher residential density. Day Care, General is a conditional use for the TF-3 zone, per the regulations detailed in the WSC Unified Zoning Code.
5. Impact of the proposed development on community facilities: The church and related uses currently exist, so the impact will not be beyond the capacity of the existing community facilities.

MOTION: To approve subject to staff recommendation.

HILLMAN moved, **SHERMAN** seconded the motion, and it carried (12-0).

5. **Case No.: CON2007-28** – LeRoy Thompson Request City conditional use for a drinking establishment on property zoned "LC" Limited Commercial on property described as;

Lots 2, 4, 6, 8, 10, 12, 14 and 16, on Lorraine, except the East 48 feet of Lots 2, 4, 6 and 8, on Lorraine, Fairmount Park Addition, Wichita, Sedgwick County, Kansas. Generally located On the southeast corner of 13th Street North and Lorraine Avenue.

BACKGROUND: The applicant requests a Conditional Use for a nightclub in an existing building, currently vacant, but in the past operated as a non-conforming nightclub in the city and most recently a Class A private club. Nightclubs are a permitted use in the LC district, but require a conditional use when located within 200 feet of residential zoning. The application area is currently permitted for a restaurant/drinking establishment (DE-R, requiring that greater than 50% of sales come from food); the site is not permitted for an outright tavern, drinking establishment or nightclub. The applicant's site plan indicates that the nightclub conditional use property is 45 feet from developed single-family residential property. The proposed nightclub building is approximately 95 feet from single-family residences.

The .50-acre site is located on the south side of 13th Street North, approximately 220 feet west of Hillside Avenue. The character of the surrounding area is that of limited commercial uses along the Hillside Avenue corridor and single-family residential uses to the west of that corridor, surrounding the application area to the north, south and west. One single-family residence abuts the parcel owned by the applicant, two other single-family residences to the west of the subject site, across Lorraine Street and one single-family residence to the north, across 13th Street North.

CASE HISTORY: The conditional use application area was platted as a part of Lots 2, 4, 6, 8, 10 and 12 of the Fairmount Park Addition in 1909. This application area received a conditional use for a parking lot in 1998 (CU-473).

ADJACENT ZONING AND LAND USE:

NORTH:	"LC"	Single-family Residence, Vacant Commercial Land
SOUTH:	"TF-3"	Single-family Residences
EAST:	"LC"	Strip Store, Warehouse/Storage
WEST:	"TF-3"	Single-family Residences

PUBLIC SERVICES: The subject property fronts 13th Street North, which is a four-lane minor arterial street with a 60-foot right-of-way at this location. The current traffic volume on 13th Street North is approximately 19,637 vehicles per day. The 2030 Transportation Plan designates that 13th Street North remain a four-lane arterial. Traffic generated by the property as a nightclub would increase since the property is currently vacant and a new use would be operating. The increase in traffic and late hours of a nightclub could negatively affect the residences to the west and south of the site. The subject property has all other public utilities.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Comprehensive Plan Objective II.B is to "Minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments."

The Unified Zoning Code requires a Conditional Use for a nightclub when it is located within 200 feet of residences. As the application area is not currently permitted as a tavern or drinking establishment, approval of a nightclub conditional use would introduce a new Class B drinking establishment on this site.

RECOMMENDATION: This location, at one time, was used as a non-conforming class B nightclub. The non-conformance was due to the fact that no Conditional Use was acquired in order to operate that particular club. Since that time, the Class A club, Elks Peerless Princess Lodge 243, occupied the existing structure and operated as a conforming private club, with no need for a Conditional Use, due to the class of club that was in operation. Currently, the owner of the property wishes to operate a new class B public nightclub at this location.

The District Advisory Board and citizens in this area have expressed at past DAB meetings about their aversion towards nightclubs, given that other clubs in the area have attracted gang activity. Based upon information available prior to the public hearings, planning staff recommends that the request for a Conditional Use be **DENIED**.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The character of the surrounding area is that of limited commercial uses along the Hillside corridor, and single-family residential uses to the west of that corridor, surrounding the application area to the north, south and west. One single-family residence abuts the parcel owned by the applicant, two other single-family residences to the west of the subject site, across Lorraine Street and one single-family residence to the north, across 13th Street North. While the requested conditional use is not out of character with the other businesses fronting Hillside, or what has been here in the past, a nightclub and associated parking is out of character with nearby single-family residences due to late hours, noise concerns and the possibility of increased crime.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned "LC" Limited Commercial, which accommodates office, retail, commercial and complementary land use. The site is suitable for a restaurant or other less intense uses that could be more beneficial to the neighborhood.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Currently the building sits vacant, but most recently was use as a class A private club/lodge. A Class A club does not need a Conditional Use for operating the club or for the sale of alcoholic beverages. Approval of this request would remove this limitation, which could have detrimental impacts on the surrounding residences, considering their proximity to the proposed nightclub and associated parking.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Comprehensive Plan does not contain guidelines specifically for nightclubs, drinking establishments or taverns. However, the Plan does have an objective to minimize detrimental impacts of higher intensity land uses located near residential living environments
5. **Impact of the proposed development on community facilities:** It is possible that approval of this request could result in an increased demand for police services.

DERRICK SLOCUM, Planning staff presented the staff report.

SHERMAN asked for clarification if DAB I voted to defer the item. He said the memorandum says the DAB voted to deny the request 7-0.

SLOCUM said they later voted to defer action on the request to give the applicant more time to present his proposal for use of the facility.

GISICK clarified that if a Class B club shuts down and then switches to a Class A club, they can't go back to a Class B club?

SLOCUM responded yes, plus he mentioned that the owner did not have an approved conditional use permit at the time the facility was a Class B club.

Tape 1, Side 2

LEROY THOMPSON, 2526 SOUTH GREENLEAF, said he has owned the property for eight years and had planned on opening a club when he retired from Raytheon, which he did in March. He said prior to that he rented the club out to a fraternal organization, the Elks. He said he did not know that when he rented the building out that it would change the zoning, since it was already a Class B club. He said he didn't understand that by renting it to the Elks, it was used for lesser zoning. He said since the Elks had what he considered an open bar; he didn't know there was a difference in the zoning. He said when he applied for all the required licenses to open his club; the City informed him that he could no longer use the building as a Class B club because he had rented it to a group that used it for a lesser purpose. He said he spent \$150,000 to purchase the building. He said he thought it was a bit strange that the Office of Central Inspection (OCI) was using what he considered a technicality to say that he couldn't open because of problems with other clubs in the neighborhood. He continued by saying that he had a degree in food and beverage management, as well as a degree in business and a Masters degree. He said he has experience and that he hosted a bachelor's dance for almost ten years. He said the only item he was ever cited for, several times, was for being over capacity. He said there was never a shooting, cutting or any violence at any of the dances he held. He also mentioned that he ran the NCO and Officer's clubs at McConnell AFB. He said he had the capability to hire 20 people to work in the club, four full time and 16 part-time and provide some jobs in the area. He said he has a major investment in the property and said he felt the City was trying to use a technicality to keep him from opening the club back up. He concluded by saying that if he'd known renting to a fraternal organization would have cancelled the zoning, he never would have rented the building.

Responding to questions from **SHERMAN** and **HILLMAN**, **THOMPSON** said the club had capacity for 157 people and that the hours would be from 11:00 a.m. so he could serve lunch, with club hours from 9:00 P.M. to 2:00 A.M.

OFFICER KIMBALL, WICHITA POLICE DEPARTMENT (WPD), PATROL NORTH BUREAU, COMMUNITY POLICING, provided Commissioners a survey conducted by the WPD consisting of five questions concerning opening a nightclub at the location, which included questions such as: would neighbors want a nightclub within blocks of their homes and what impact a nightclub would have on the neighborhood. He reviewed the survey responses and said that it was conducted in the neighborhood surrounding the location including the 1200 block of South Lorraine, the 1400 block of North Lorraine, the 1300 block of South Chautauqua and the 1400 block of North Chautauqua. He said the surrounding area is mainly residential and that 28 people responded to the survey. WPD said records indicated that in 2002-2006 there were several burglaries at the location and that records also indicated that **MR. THOMPSON** was affiliated with the club when it was a Class A club. He said the WPD has a lot of issues if the club becomes a Class B club including the fact that the front door opens directly onto 13th Street, which is a safety issue. If there is a disturbance, citizens would probably end up on 13th Street. He also mentioned that most of the rear parking lot leads out onto Lorraine, which disturbs the neighbors and that there is also a tremendous amount of street parking for the club along Lorraine. He said neighbors complain about cars blocking their driveways, loud music, and cruising. He concluded by saying that this was a residential neighborhood and they did not feel this was the appropriate location for a club.

DONNA BLACK, 6814 E. HARRINGTON BEL AIRE, said she was an investor and landlord and that she owned two properties in the neighborhood. She said if this proposal passes, she would have to let the renters at 1332 N. Lorraine move out because one of the conditions of the rental was that the club would not re-open. She said she has seen a big difference in the neighborhood and that it had quieted down. She said it used to be a scary neighborhood but once the club closed down, she has been able to rent her property. She said if the proposal passes; she will probably have to sell her properties. She concluded by saying that she felt it was inappropriate to have a drinking establishment around families and that it disturbed the neighborhood. She said she invested in the neighborhood because she thought the City was trying to clean it up.

THOMPSON said there has been a club at this location since 1969, up until April 2007, when he asked the Elks to move. He said he also sent out letters to people who were concerned about his proposal so they could attend this meeting. He said he also felt it was inappropriate for the WPD to create and conduct a survey. He also questioned who filled out the surveys and whether the "breadwinner" was home during the daytime. He said he has invested in this property and chose the correct vehicle to get this straightened out. He said the only reason this is no longer a

club is through a technicality, and that he doesn't think this is fair for him to lose \$150,000 because he made the mistake of renting to the Elks. He also mentioned that he was a member of the Elks and sits on the House Committee and that he has made suggestions to the Elks about the operation of their club, but that he was just one member of the committee and anything he suggested was not an individual decision.

GISICK asked if a Class B club rents to someone, at what point does the City get involved and when is the business owner notified that the club has gone from B to A or does that just automatically happen?

SLOCUM said he believed OCI took care of the notification process during the licensing process. He also mentioned that any conditional use runs with the land and that a Class B club was considered non-conforming use.

GISICK clarified that if they had stayed a Class B Club they would still be able to operate?

SLOCUM said that was correct.

JOE LANG, LAW DEPARTMENT, clarified that any "non-conforming" use will be lost if a facility becomes vacant. He said there are time frames in the licensing provisions and that this happens frequently. He said old facilities located in neighborhood are "grand fathered" in and allowed to continue but if they become vacant long enough then they lose their "grandfather clause" and have to become conforming. He said generally this is considered as being good for the neighborhood and that is why there is a limit on how long a facility can be vacant.

HILLMAN clarified that this facility can still be used for a club but that it needs to be a Class A club used by a non-profit organization, so the applicant still has the ability to utilize the club in some manner?

SLOCUM said yes. He added that it could also be a restaurant/drinking establishment as long as 50% of the sales were from food items.

MOTION: To approve staff recommendation to deny the application.

ANDERSON moved, **BISHOP** seconded the motion, and it carried (11-1). **GISICK** – No.

6. Other matters/Adjournment.

DIRECTOR SCHLEGEL referred Commissioners to the flyer sent out with the agenda on the upcoming Municipal Leadership Academy sponsored by the League of Kansas Municipalities.

HILLMAN said he appreciated the flyer and verified that Commission members would have to "write their own check" if they wanted to attend.

DIRECTOR SCHLEGEL said that was correct.

DIRECTOR SCHLEGEL inquired if Commissioners had any feedback for staff on the CIP presentations?

HENZTEN said he believed it was a good start.

BISHOP said she thought the Advance Plans Committee needed to be studying trends and issues such as maintenance costs. She asked, as the City is building more, are they factoring in future maintenance costs? And if they are, she would like to know exactly how we are doing that, as well as studying the debt structure.

MCKAY requested further clarification regarding **CON2007-28**. He said a club can be non-conforming but be “grand fathered” because it is a certain type of club even though uses are basically the same? He asked if a club can go from a Club B to a Club A, but if it is vacant for a short period of time, it cannot go back to a Club B? He said his concern was continued use with no vacancy.

LANG said that was because of the different licensing required by State Alcohol and Beverage Control. He said from a planning standpoint, a Class A club does not normally serve the general public and have traffic and other issues. He said Class A clubs are usually members only and presumably do not have the same type of impact on the neighborhood as a Class B club. He commented that this issue has been litigated and that staff’s position has always been upheld because going from a Class A Club to a Class B Club is considered a change in use and classification.

MCKAY commented then the applicant could found “the ABC Fraternity” and invite anyone who walks off the street to join?

LANG said as long as he meets the non-profit guidelines.

DIRECTOR SCHELGEL commented that although it sounds like similar types of use, the law makes a distinction between a Class A club and a Class B club.

LANG said staff encounters similar situations between neighborhood taverns and clubs. He said there are distinctions within the law, whether the neighbors can see the difference.

The Metropolitan Area Planning Department informally adjourned at 3:25 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2007.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)